

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ANTONIO LUCERO MENDEZ,

Plaintiff,

-against-

LUX ENTERPRISES, LLC, PRIARITY WAY, LLC,  
and CHRISTOPHER PRIAR,

Defendants.

No. 1:23-cv-10968 (JLR)

**ORDER**

JENNIFER L. ROCHON, United States District Judge:

On December 19, 2023, this action was removed from the New York Supreme Court, County of Bronx, by Defendant Lux Enterprises, LLC (“Lux Enterprises”). *See* ECF No. 1.

On December 21, 2023, the Court ordered Lux Enterprises to show cause why this action should not be remanded because it does not meet the statutory requirements for removal. *See* ECF No. 4. Specifically, based on the notice of removal, the Court was unable to ascertain:

- Whether the notice of removal was “filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based,” as required by 28 U.S.C. § 1146(b)(1); and
- Whether “all defendants who h[ad] been properly joined and served . . . join in or consent to the removal of the action,” as required by 28 U.S.C. § 1146(b)(2)(A).

*Id.* The Court also noted that although the notice of removal stated that “[t]his action was commenced by the filing of a Summons and Complaint dated October 9, 2023 (attached hereto as Exhibit A),” ECF No. 1-1 ¶ 2, the summons and complaint were actually filed on May 26, 2023, ECF No. 1-2 at 2, 9.

On January 11, 2024, Lux Enterprises responded to the order. ECF No. 9. In that response, Lux Enterprises states that “[t]he Complaint was served on [Lux Enterprises] via Secretary of State on June 8, 2023.” *Id.* ¶ 1. Lux Enterprises further states that it “only

received a copy of the Complaint and became aware of this lawsuit on January 4, 2024[4] after its principal, Angel Martinez, was contacted by the undersigned counsel at the direction of defendants' insurance company." *Id.* ¶ 5. This is not accurate, because Lux Enterprises filed the petition for removal on December 19, 2023, more than two weeks before January 4, 2024. ECF No. 1.

Counsel for Plaintiff Antonio Lucero Mendez also submitted a letter responding to the order to show cause. ECF No. 10. Plaintiff's counsel states that it served a subpoena duces tecum related to the state court action on Lux Enterprises's insurance carrier on September 21, 2023, and that a representative from Lux Enterprises's insurance carrier discussed the state court action with Plaintiff's counsel on November 15, 2023. *Id.*


Based on the foregoing, it is not the case that the notice of removal was "filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based," as required by 28 U.S.C. § 1146(b)(1). Under New York Law, service of process on limited liability companies is permitted by serving the secretary of state, and "[s]ervice of process on such limited liability company shall be complete when the secretary of state is so served." N.Y. Limit. Liab. Co. § 303. "[S]ervice of process . . . is deemed complete when the Secretary of State is served, regardless of whether such process ultimately reaches the corporate defendant." *Cedeno v. Wimbledon Bldg. Corp.*, 207 A.D.2d 297, 298 (1st Dep't 1994); *accord Continental Indemnity Co. v. Bulson Management, LLC*, 20-cv-03479 (JMF), 2022 WL 1747780, at \*2 (S.D.N.Y. May 31, 2022). Therefore, service was complete on Lux Enterprises on June 8, 2023. ECF No. 9 ¶ 1. Even if service was not complete at that time, at a minimum, Lux Enterprise was aware of the action *at least* as of November 15, 2023, when a

representative from Lux Enterprises's insurance carrier discussed the action with Plaintiff's counsel. ECF No. 10. Thus, Lux Enterprises's removal on December 19, 2023 was untimely.

Therefore, this action is REMANDED to the State Court of the State of New York, County of Bronx. Any other pending motions are moot and any conferences are canceled. The Clerk of Court is respectfully directed to close the case.

Dated: January 17, 2024  
New York, New York

SO ORDERED.

  
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JENNIFER L. ROCHON  
United States District Judge